IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B.CIVIL WRIT PETITION NO.1840/1999.

Omkar.

VERSUS

M/s.Brij Mohan Ramgopal Sarraf & Others.

07.12.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.R.K.Daga, for the petitioner.
Mr.M.L.Goyal, for the respondents.

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This writ petition has been filed by the debtor against whom an application was filed under Section 6 sub-section (2) by the respondent No.1 for the recovery of an amount of Rs.44,994.49p which was the price for silver ornament weighing 6.6 Kg purchased by the petitioner from the respondent No.1 vide Exhibits-1, 2 and 3.

Learned Debt Relief Court vide its judgment and decree dated 27.03.1996 found the fact that the aforesaid amount was due as the bills (Exhibits-1, 2 and 3) were proved and that the petitioner had purchased silver from the respondent No.1 for an amount of Rs.44,994.49p. Learned Debt Relief Court, therefore, passed a decree for the aforesaid amount to be payable in equal installments of Rs.5,000/- every six months that last installment to be paid for Rs.4,994/-. The interest which was allowed was of 4% p.a.

The judgment and decree dated 27.03.1996 passed by

the learned Debt Relief Court was challenged by the petitioner before the District Judge, Jaipur District, Jaipur who by his judgment dated 06.03.1999 dismissed the appeal.

Two pleas were raised by the learned counsel for the petitioner before the learned District Judge. In the first plea, it was contended that no notice of the application was served upon the petitioner and second please was to the effect that application did not fall within the jurisdiction of the Relief of Agricultural Indebtedness Act of 1957 as it was for the recovery of the price of silver purchased by the petitioner from the respondent.

The learned District Judge came to the conclusion that the petitioner was in fact served vide registered notice and acknowledgment receipts, which were available on the record and as such the aforesaid contention of the petitioner regarding non-service of notice on debtor was rejected. Before this court also the learned counsel for the petitioner has reiterated the same assertion regarding non-service of notice. However, learned counsel for the petitioner could not show as to what was wrong with the finding of the learned District Judge which was based upon the appreciation of the evidence by looking into the acknowledgment receipts which were on record.

In view of the above, so far as the above contention is concerned, I find no ground to interfere with the same.

The petitioner's second plea was that the application under Section 6(2) by the creditor could not have been filed for the recovery of the price of silver as it did not form part of any 'debt'. The learned District Judge having gone through the definition of the 'debt' held that it would include both the liabilities on account of cash and kind and since in the instant case admittedly the amount which was sought to be recovered from the petitioner who is a member of Scheduled Tribe, the recovery of the price for the goods would fall within the category of liability on the basis of kind and not cash being price of goods.

Learned counsel for the petitioner has again reiterated the same contention. The definition of 'debt' under Section 2(c) of Rajasthan Relief of Agricultural Indebtedness Act, 1957 reads as follows :-

> "(c)"debt" includes all liabilities owning to a creditor in cash or kind secured or unsecured, payable under a decree or order of a civil court or otherwise, whether due or not due, but not shall include land revenue or anything recoverable as land revenue other than liabilities payable under a decree of a village panchayat or any money for the recovery of which a suit is barred by limitation."

A perusal of the above definition goes to show that it has a very wide definition and would cover even the cases of money due on account of the price of the goods purchased by a debtor.

In the instant case it has been found as a fact by both the courts below that the petitioner had purchased

6.6 Kg silver from the respondent No.1 for an amount of Rs.44,994.49p vide cash memos Exhibits-1, 2 and 3 which have been duly proved before the court below.

In that view of the matter, the judgment of the learned District Judge and the court below do not suffer from any error apparent on the face of record.

In the facts and circumstances, therefore, the judgment of the learned courts below do not call for any interference. This writ petition as well as the stay application consequently, stand dismissed.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.